vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.574 OF 1991

Bhimrao Dajirao Kadam & Ors. ... Petitioners

V/s.

Lahu Mahu (Bhau) Madhavi & Ors. ... Respondents

Mr.S.G. Karandikar for Petitioners
Mr.S.K. Chinchalikar, AGP, for Respondent Nos.6 and 7

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **FEBRUARY 28, 2006**

ORAL JUDGMENT:

. The Petition challenges the order passed by the Additional Commissioner, Konkan Division on 22.11.1990 whereby the Additional Commissioner has directed the suit land to be restored to the tribal, Respondent No.1 herein.

2. The facts giving rise to the present petition are as follows:

Chintaman Krishna Gadre and Radhabai Krishna Gadre were the owners of the suit land on 1.4.1957 i.e., the Tillers day. On that date, Radhabai was a widow and Chintaman was disabled. Therefore, according to the Petitioner, Respondent No.1 was recorded as the tenant

in respect of the suit land. On 22.11.1958, Chintaman expired. In 1964, Radhabai expired. Respondent No.1 did not exercise his right under section 32F of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'Bombay Tenancy Act') within one year from 1958. According to the Petitioner, in these circumstances, the respondent lost his right under section 32F. The Petitioners purchased the lands from Respondent Nos.2 to 5 in 1981. Certain amounts are payable by the tenant from 1954-55 to 1961-62. An application was therefore filed by the landlords for eviction of the tenant on the ground of default. The Avval Karkun by his order dated 30.8.1962 directed the tenant, the Respondent No.1 herein, to deposit all the arrears of rent within a stipulated time. This order was not complied with by the tenant. On 23.3.1963, a further order was passed by the Avval Karkun directing the possession of the suit land to be handed over to the landlords in view of the default in rent and arrears. The possession was handed over to the landlords on 1.6.1963 and accordingly, a mutation entry was made recording this fact. The Maharashtra Restoration of Scheduled Tribes Act, 1974 was promulgated and came into force on 1.11.1975. The Tehsildar suo motu initiated proceedings under the Maharashtra Restoration of Scheduled Tribes Act, 1974 (for short, 'the Restoration Act') in Case No.44/75. On

29.10.1978, these proceedings were dropped by Tehsildar on coming to conclusion that the suit land never belonged to a tribal and there was no transfer from a tribal to a non-tribal, requiring the suit land to be restored to them under the Restoration Act. After 12 years from the proceedings being dropped, the Additional Commissioner, Konkan Division, decided the suomotu revision application and set aside the order of the Tehsildar and directed the possession of the suit land being handed over to the Respondent No.1.

3. Taking exception to this order of the Additional Commissioner in revision, the learned Counsel for the Petitioner submits that the entire order is misconceived and has been passed without any jurisdiction. The learned Counsel submits that the impugned order has been passed ignoring the orders passed by the competent Tenancy Court evicting the tenant from the suit land and handing over the possession of the land to the Petitioner. He points out that the tenant i.e., Respondent No.1 herein, had not become the owner of the suit land as on 1.4.1957 and therefore, the provisions of the Restoration Act are not applicable to the facts of the present case. Reliance is placed on the judgment of this Court in Writ Petition No.2784 of 1985.

4. A bare perusal of the provisions of the Bombay Tenancy Act indicates that on the Tillers day, the tenants secured a right to purchase the land which they till from the owner. Under section 32, tenants are deemed to have purchased the lands they till as on 1.4.1957. Under section 32F, a tenant has a right to purchase the land from a landlord who suffers any mental or physical disability or is a minor or a widow, within one year after he is informed by the landlord of the removal of such disability. In the present case, undisputedly, the landlords Chintaman Krishna Gadre was physically disabled and Radhabai was a widow. In these circumstances, Respondent No.1 could not have exercised his right to purchase the land that he had tilled. However, even after Chintaman Krishna and Radhabai expired, the Respondent No.1 did not deem it necessary to make an application for exercising his right to purchase the land.

5. Undisputedly, the landlords have obtained the decree for evicting Respondent No.1 from the suit land for non-payment of rent and arrears. These orders have not been challenged by Respondent No.1 and, therefore, stand confirmed. However, it was only when the Restoration Act was passed that the Tehsildar suo motu proceeded against the landlords for restoring the suit

land to Respondent No.1. The Tehsildar rightly dropped these proceedings since there was no transfer of land from a tribal to a non tribal; there was no question of the suit land belonging to the tenant or he having the ownership rights of the suit land. Therefore, the transfer of those lands as contemplated under the Restoration Act did not in fact take effect. The Additional Commissioner by the impugned order has misdirected himself while concluding that there has been a transfer of the suit land in breach of the provisions of the Restoration Act. There is no question of the tenant being in ownership of the suit land for him to have transferred the same to non tribal. The petitioners had acquired the title through Chintaman Krishna Gadre and Radhabai by purchasing the suit land from Respondent Nos.2 to 5. In my view, therefore, the impugned order is required to be set aside.

6. In the case of *State of Maharashtra & Anr. V/s. Khatua Makanji & Company Pvt. Ltd.*, **1987 Mh.L.J. 909,** the Division Bench of this Court has considered a similar case where a Tribal was a tenant. The tenant had made a statement that he was not willing to purchase the land. The Agricultural Lands Tribunal passed the order declaring that the tenant was not willing to purchase the land and therefore, the purchase became

ineffective. The possession of the lands was therefore, delivered to the landlord. The Tribal tenant then sought restoration of the land under the Restoration Act. The Division Bench held that the tenant does not become a deemed purchaser subject to fulfilment of conditions under section 32 and the succeeding sections. The legal title of the agricultural land does not vest in the tenant unless such conditions are satisfied including the payment of purchase price of lands. This Court held that the word "transfer" in the definition clause under the Restoration Act indicates that the land must be transferred. Similarly, in Writ Petition No.2784 of 1985, this Court has taken a view that when the title of the agricultural land never vested in the Tribal, the provisions of sections 3 and 4 of the Restoration Act are not applicable. In the present case, the land was owned by Chintaman and Radhabai and after them by Respondent Nos.2 to 5. The Petitioners had purchased the same under a registered sale deed. The tribal tenant, Respondent No.1 had not complied with the provisions of section 32 and the succeeding section and hence, the purchase was deemed to be ineffective. The possession of the suit land did not remain with Respondent No.1 as he had not acquired the status of a deemed purchaser under the Tenancy Act. Therefore, the provisions of the Restoration Act are not applicable.

7. The impugned order is therefore, set aside. The Petition allowed in terms of prayer clause (b).